



ATTACHMENT **A**

This forms part of application # _____

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City of **Kelowna**
COMMUNITY PLANNING

INFORMATION BULLETIN 04

CANNABIS PRODUCTION IN THE ALR

Revised: May 8, 2019
Issued: August 15, 2018

1. SCOPE OF THIS INFORMATION BULLETIN

This information bulletin provides guidance to assist in interpreting the *Agricultural Land Commission Act*, S.B.C. 2002, c. 36 (**ALCA**) and regulations in relation to cannabis production in the Agricultural Land Reserve (**ALR**). The ALCA and regulations will govern if inconsistent with this bulletin.

This information bulletin is directed only to interpretation of the ALCA and regulations. Compliance with the ALCA and regulations in relation to cannabis does not relieve persons from the need to comply with all other applicable laws, regulations and bylaws at the federal, provincial and local government levels.

2. RECENT CHANGES TO STATUTE AND REGULATIONS

Effective February 22, 2019, the ALCA and the Agricultural Land Reserve Use, Subdivision and Procedure Regulation (now the **ALR General Regulation**) were amended and the Agricultural Land Reserve Use Regulation (the **ALR Use Regulation**) was created. Though many concepts contained in the ALCA and regulations remain unchanged, there have been changes related to the use of ALR land for cannabis production. All references in this information bulletin to the ALCA and regulations are as of February 22, 2019, unless otherwise stated.

3. WHETHER CANNABIS PRODUCTION IS A FARM USE

In the past, certain forms of cannabis production, but not others, had been “designated” as farm use by regulation. This was the practice followed when s. 2(2.5) of the former regulation was introduced in July 2018. The fact that certain production required “designation” to be a farm use suggested that non-designated forms of cannabis production:

- were not a farm use; and
- as such, could only be engaged in if the Agricultural Land Commission (the **Commission**) approved a non-farm use application specific to that use.

On February 22, 2019, s. 2(2.5) of the former regulation was repealed and the ALR Use Regulation was created. The ALR Use Regulation addresses cannabis production in s. 8, in a part of the ALR Use Regulation that is entitled “Farm Uses”, and no longer “designates” a

subset of cannabis production as farm use. This regulatory change clarifies that all forms of cannabis production are a “farm use”.

Because all forms of cannabis production are a “farm use”, cannabis production in the ALR does not contravene the ALCA even if engaged in without the Commission’s approval.

However:

- the ALR Use Regulation specifically allows local governments to prohibit cannabis production in certain forms (see section A of this bulletin); **AND**
- certain other activities associated with cannabis production, such as fill placement or soil removal, may still require proponents to engage with the Commission (see section B of this bulletin).

A. Local Government Authority To Prohibit

Local governments play a significant role in determining what kind of cannabis production occurs in their community.

Local governments may regulate or prohibit certain kinds of cannabis production, though may not prohibit all forms of cannabis production.

Section 8 of the ALR Use Regulation provides:

- (1) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced
 - (a) outdoors in a field, or
 - (b) inside a structure that, subject to subsection (2), has a base consisting entirely of soil.
- (2) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced inside a structure that meets both of the following conditions:
 - (a) the structure was, before July 13, 2018,
 - (i) constructed for the purpose of growing crops inside it, including but not limited to producing cannabis lawfully, or
 - (ii) under construction for the purpose referred to in subparagraph (i), if that construction
 - (A) was being conducted in accordance with all applicable authorizations and enactments, and

(B) continues without interruption from the date it began until the date the structure is completed, other than work stoppages considered reasonable in the building industry;

(b) the structure has not been altered since July 13, 2018 to increase the size of its base or to change the material used as its base.

Section 4 of the ALR Use Regulation provides:

The farm uses referred to in this Part [which includes s. 8] may not be prohibited

- (a) by a local government enactment except a bylaw under section 552 [*farming area bylaws*] of the *Local Government Act*, or
- (b) by a first nation government law, if the activity is conducted on settlement lands.

B. Placing Fill In, And Removing Soil From, The ALR

There are strict rules regarding placement of fill in the ALR and removal of soil from the ALR, **even when necessary for a farm use**, unless limited exceptions are met.

Q. Do the rules on placement of fill in the ALR and removal of soil from the ALR apply to the construction of structures intended to be used for the production of cannabis?

A. Yes. These rules are found in ss. 35-36 of the ALR Use Regulation and apply generally, to the construction of structures for the production of cannabis, subject only to the limited exceptions summarized below.

Typically even where the fill placement or soil removal is for cannabis production, successful completion of a notice of intent and/or use application process is required before the activity can proceed. This is so unless all of the following conditions are met:

- the fill placement or soil removal are for the purpose of constructing a structure for farm use; AND
- the total area from which the soil is removed or on which fill is placed is 1,000 m² or less; AND
- if the area from which the soil is removed or on which the fill is placed is in a floodplain, the resulting elevation level is consistent with the minimum elevation level established under all applicable local government enactments and first nation government laws, if any, respecting flood protection in the floodplain; AND
- the fill **is not, and does not contain**, construction or demolition waste (including masonry rubble, concrete, cement, rebar, drywall and wood waste), asphalt, glass,

synthetic polymers, treated wood, or unchipped lumber, as none of these may be used as fill in the ALR: ALR Use Regulation, ss. 35-36.

See the Commission's Information Bulletin #7 – Soil or Fill Use in the ALR for more information.

4. CONSTRUCTION, MAINTENANCE AND OPERATION OF STRUCTURES NECESSARY FOR FARM USE

Subject to any limits and conditions set out in Part 2 of the ALR Use Regulation, the use of land in the ALR to construct, maintain or operate a structure (including a greenhouse), driveway or utility that is necessary for a farm use is designated as a farm use: ALR Use Regulation, s. 5. A designated farm use may be undertaken without making a use application to the Commission.

Q. What does “subject to any limits and conditions set out in Part 2 of the ALR Use Regulation” mean for the construction of structures intended to be used for cannabis production?

A. The construction of structures for cannabis production are limited by the specific limitations for cannabis production set out at s. 8 of the ALR Use Regulation.

In determining whether an activity is “necessary” for a farm use, consideration must be given to whether the nature and size of the activity is proportionate to the farm use. If a landowner claims that an activity is “necessary” for a farm use that has not yet commenced, issues may arise in respect of whether the proposed use is in fact going to occur, and whether the nature and size of activity characterized as “necessary” will in fact be necessary to that use.

5. STORING, PACKING, PREPARING AND PROCESSING FARM PRODUCTS

The ALR Use Regulation refers to certain other activities potentially related to cannabis that local governments may not prohibit, but may regulate, as described in s. 4 of the ALR Use Regulation, such as certain storing, packing, preparing and processing uses set out in s. 11.

The use of land in the ALR for storing, packing, preparing and processing farm products is designated as a farm use, and as such may be undertaken without application to the Commission, if at least 50% of the farm product is (a) produced either on that agricultural land or by an association (as that term is used in the *Cooperative Association Act*) to which the owner of the agricultural land belongs, or (b) feed required for farm use on that agricultural land: ALR Use Regulation, s. 11(2).

REVITALIZING THE Agricultural Land Reserve AND THE Agricultural Land Commission

Final Committee Report to the Minister of Agriculture:
Recommendations for Revitalization

ATTACHMENT **B**

This forms part of application

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RECOMMENDATION 15:

Protect the ALR from anticipated significant impacts of federal cannabis legalization:

1. Establish an immediate provincial moratorium on all non-soil bound cannabis production facilities in the ALR
2. Provide the ALC with authority to consider all cannabis-related applications and to establish criteria for limits throughout the ALR
3. Review and clarify the recently adopted regulation for cannabis production in the ALR.

Issue/Rationale:

The Committee did not include cannabis facilities in the ALR as part of their public engagement exercise, nor was cannabis production facility location identified as a question during the provincial government's 2017 public engagement on cannabis. The Committee recognizes that the Minister of Agriculture recused herself from provincial cannabis-related decisions. The Committee, however, is committed to bringing this key ALR-related concern to the Province's attention.

The Committee heard strong support from stakeholders and the public for significant restrictions - including an outright ban - on cannabis production in the ALR. Further, in early July 2018, the Union of BC Municipalities (UBCM) requested that the provincial government establish a moratorium on the use of agricultural land to grow cannabis until there is a comprehensive review and consultation with local governments.

The Committee's interim recommendations on cannabis production in the ALR (Interim Committee Report, July 31, 2018) reflected unsolicited and significant concerns raised during its consultations. The Interim Report recommended steps to regulate cannabis production in the ALR. These steps included: a moratorium on all non-soil bound cannabis production facilities in the ALR pending a provincial level analysis of impacts; following the analysis, enabling the ALC to establish

rules/criteria for cannabis production in the ALR; and permitting production of cannabis only through an application to the ALC.

On July 13, 2018, just prior to the receipt of the Committee's Interim Report, Government adopted regulations that permitted the production of soil bound cannabis in the ALR. The known and unknown impacts of this new use in the ALR continue to be a concern and the Committee continues to recommend that the new regulation requires significant review.

Cannabis is a new and relatively unknown industry supported by substantial capital investment. The potential impacts of the cannabis industry on the ALR are likely to be significant and are not yet fully understood. The projected impacts of the recreational cannabis industry on the ALR may be substantial due to the number and scale of the industrial structures (often in excess of 1,000,000 ft²) both in place and proposed. Additionally, cannabis companies may experience an initial boom and bust cycle, which could result in large industrial structures being abandoned in the ALR, thus alienating the use of the land for soil based agriculture and potentially being re-purposed for generic industrial uses.

Advertisements for the sale of ALR land, and general inquiries made to local governments, suggest there is significant speculation surrounding cannabis production in the ALR. ALR land is generally less expensive than industrial zoned land and is therefore a target for this well-funded industry. The Committee believes the purpose of the ALR is not to provide cheap land in order for cannabis-producing, multi-national company headquarters to establish large industrial scale processing and manufacturing facilities, with associated infrastructure (e.g., large parking areas).

The Committee is recommending a precautionary approach to the construction of large scale, highly specialized cannabis facilities in the ALR. The approach is vital to ensuring the ALR is not dominated by very large industrial structures – growing a high value crop in a potentially volatile market – to the detriment of other agricultural commodities that could well be priced out of the land market. Provincial-level analysis is important to understand the nature of emerging and anticipated risk. A precautionary approach, especially while the industry is establishing itself and which utilizes the ALC application process, will assist in protecting the future of the ALR. The Committee is concerned that large areas of high capability farmland could be permanently converted to industrial scale cannabis operations, operations which are essentially industrial uses and which could be located anywhere outside the ALR.

The current Regulation under the Act, amended to address cannabis production, restricts cannabis production in the ALR to “soil based” facilities. It is important to note, however, that the amendments were enacted prior to the publication of supporting government policy and guidelines, and the interpretation of what constitutes a “soil based” facility presents many challenges for the ALC and local governments and this continues to be the case today (Fall, 2018). As the industry is so new and the federal legislation is actively evolving, there is not enough established knowledge about normal cannabis farm practices, scale of operations, appropriate ancillary activities (e.g., agri-tourism and gathering for events), processing requirements, etc. in order for ALC staff to adequately assess whether a proposed facility meets the intent of the regulation. The regulation speaks specifically to production and makes no reference to limits on the amount of land covered for the storing, packing, preparing or processing of cannabis. In addition, there seems to be an interest by some aspects of the industry to go beyond primary production and processing and eventually develop a cannabis retreat and spa infrastructure. This type of ancillary development, while not (to the knowledge of the Committee) currently contemplated by the federal and provincial legislation, is an aspect of the industry that could have a large impact on the ALR, and should proactively be addressed in an ALR regulation.

The Committee further understands that the industry may be considering approaches that will avoid the intent of the amended regulations. If successful, these efforts may in fact undermine the original intent of the amendments of July 13, 2018.

While the Committee considers Government's current Regulation to be well-intended, the lack of detail, unintended consequences, and limited analysis related to the potential response to this Regulation has placed the ALC in a difficult position. The Committee believes the Regulation must be further refined to achieve Government's intended policy. We recommend the ALC and Government collaborate to clarify the type and scale of cannabis production structures deemed appropriate within the ALR. The ALC is an administrative tribunal whose Commissioners are selected by Government to make land use decisions based on their general expertise in agriculture. As such, the Committee suggests the ALC is the most appropriate adjudicative body to ascertain the appropriate location and scale of cannabis production in the ALR.

Actions:

- 1. Direct facilities for lawful cannabis not grown in a field to seek approval through the ALC application process to allow greater understanding and analysis of the impacts of the industry**
 - 2. Require notification to the ALC when an application for a federal cannabis production license is submitted for lands in the ALR**
 - 3. In consultation with the ALC, ensure the Regulation, to the extent possible, does not enable opportunities for avoiding the intent of the Government**
 - 4. Prepare policy related direction regarding the difference between processing and manufacturing to the eventual expansion of the cannabis industry to include tertiary products infused with cannabis compounds**
 - 5. Provide direction on meeting the federal Health Canada requirements while meeting the intent of the provincial Regulation with respect to processing**
 - 6. Identify which other permitted uses lawful cannabis producers may avail themselves of and to what scale if considered a 'farm use' under the Regulation, e.g., retail sales, agri-tourism, gathering for events, etc.**
 - 7. Include lawful cannabis storing, packing, preparing and processing in the recommended 2% site coverage threshold (Maximum Cumulative Footprint) in Recommendation 14.**
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